

EXPLANATORY MEMORANDUM TO
THE HYDROCARBON OIL (VAPOUR RECOVERY RELIEF) REGULATIONS 2016
2016 No. XXXX

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty’s Revenue and Customs (“HMRC”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument provides for a relief from excise duty charged on unleaded petrol that is captured as vapour during a delivery and returned to duty-suspended stock in an excise warehouse. The relief takes the form of an allowance to be set off against a liability for excise duty on unleaded petrol. The instrument replaces a relief which was formerly allowed by the Commissioners for HMRC by way of Extra Statutory Concession (ESC)¹.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Under section 6(1) of the Hydrocarbon Oil Duties Act 1979 (“HODA 1979”), fuel, including unleaded petrol, becomes liable to excise duty when it is imported into the UK or, if produced in the UK, when it is delivered for home use from premises listed within section 6(1)(b) HODA 1979. This essentially means that UK produced unleaded petrol is not charged with duty, and is not subject to the requirement to pay duty until it is delivered, or released, from a refinery or excise warehouse. Unleaded petrol in the refinery or excise warehouse that is not charged with duty and is available for delivery/release is referred to as duty-suspended stock.
- 4.2 The Environmental Protection (Proscribed Processes and Substances etc.) (Amendment) (Petrol Vapour Recovery) Regulations 1996², require petrol distributors to capture petrol vapour displaced during loading to prevent volatile organic compounds escaping into the atmosphere. In practice, petrol distributors process the captured vapour and return the resulting product to tanks within the excise warehouse containing duty-suspended stock.

¹ Notice 48, paragraph 6.3: Excise – hydrocarbon oil duty: relief of duty on recovered motor spirit vapour. <https://www.gov.uk/government/publications/vat-notice-48-extra-statutory-concessions/vat-notice-48-extra-statutory-concessions#excise-duties---concessions-designed-to-remove-inequities-or-anomalies-in-administration>

² The Environmental Protection (Proscribed Processes and Substances etc.) (Amendment) (Petrol Vapour Recovery) Regulations 1996 enact Directive 94/63/EC

- 4.3 The ESC, which has operated since 1993, provides for relief from duty on petrol where the petrol has been released from the refinery/excise warehouse. At this point the duty on that petrol has become both chargeable and payable. Some petrol is recovered as vapour during the release and subsequently returned to duty-suspended stock. The relief prevents double taxation of the recovered petrol on subsequent delivery/release.
- 4.4 This instrument preserves the full tax effect of the ESC through the exercise of powers to make regulations allowing for relief on excise duty on hydrocarbon oils under section 20AA of HODA 1979.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom
- 5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 Unleaded petrol evaporates inside a storage tank or the tank of a vehicle and the vapour fills the space above the liquid fuel. When unleaded petrol is delivered into a vehicle, evaporated fuel is forced out by the fuel being loaded. The law requires operators to adopt measures to capture the displaced vapour to prevent harmful emissions into the atmosphere.
- 7.2 Fuel duty is charged when unleaded petrol is released for consumption from a refinery or import terminal. Therefore, by the time the unleaded petrol vapour is released and captured it has already been subject to fuel duty.
- 7.3 To enable producers to recycle the recovered fuel and avoid double taxation of it, HM Revenue and Customs (HMRC) has by Extra Statutory Concession (ESC) allowed them to return the captured product to an excise warehouse and to claim a credit of fuel duty already paid on the recovered product.
- 7.4 These Regulations replace the ESC by providing for relief from fuel duty on unleaded petrol vapour captured during the release of unleaded petrol from a refinery or import terminal and returned to the excise warehouse at the place of loading for recycling.
- 7.5 Regulation 2 provides that the form of relief is an allowance which may be set off against duty payable in respect of recovered unleaded petrol. Regulation 3 sets out who may claim the relief. It allows a claim to be made by a person who is authorised to defer payments of duty charged on unleaded petrol who is either (1) the authorised warehousekeeper of the excise warehouse where the recovered unleaded petrol is stored or (2) the person on whose behalf that authorised warehousekeeper made a release of unleaded petrol. It also specifies how the relief may be claimed, which is by adjustment to the claimant's deferment account.

- 7.6 Regulation 4 provides that the amount of duty to be claimed should be the current rate of duty on unleaded petrol, multiplied by the amount in litres of recovered unleaded petrol.
- 7.7 Regulation 5 sets out the conditions for claiming the relief. The conditions include providing sufficient proof that the amount claimed is correct.
- 7.8 Regulation 6 provides that HMRC may cancel any relief that should not have been allowed and requires the claimant to repay the amount claimed.

Consolidation

- 7.9 There are currently no plans to consolidate these Regulations.

8. Consultation outcome

- 8.1 In June 2015, HMRC launched a public consultation: Vapour recovery scheme: options for replacing the Extra Statutory Concession (ESC). The consultation ended on 9 September 2015.
- 8.2 These draft Regulations will be published on gov.uk for comment for four weeks from [Wednesday 14 December to Wednesday 11 January].

9. Guidance

- 9.1 A Revenue and Customs Brief will be issued and HMRC will update guidance in Notice 179: Accounting for excise duty and VAT on motor and heating fuel.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is nil.
- 10.2 The impact on the public sector is nil.
- 10.3 A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>

11. Regulating small business

- 11.1 The legislation applies to small business.
- 11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to keep to a minimum any new regulatory requirements as part of this change.
- 11.3 The basis for the final decision on what action to take to assist small business, following consultation, is that the measure is not expected to have any significant impact on small and micro businesses, and so no additional action is necessary.

12. Monitoring & review

- 12.1 Reviews of compliance with the practical application of the new regulations will form part of the compliance review programme of the Indirect Tax Directorate of HMRC.

13. Contact

- 13.1 Tony Baxter at HMRC Tel: 03000 587921 or email: tony.baxter@hmrc.gsi.gov.uk can answer any queries regarding the instrument.